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DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-195887

DATE: February 6, 1980

MATTER OF: Aul Instruments, Inc.

CN6-1381

DIGEST:

Cancellation of solicitation due to inability of Government to timely furnish required Government Furnished Material and Equipment, and due to resulting changes in specifications, was proper.

Aul Instruments, Inc., has protested the [cancellation of ~~invitation for bids~~ (IFB)] No. N00123-79-B-1109, issued by the Naval Regional Contracting Office, Long Beach, California. The requiring activity, which canceled the solicitation, was the Naval Electronic Systems Command (NAVALEX).

The IFB was for 13 AN/TSC 95 Communication System Shelters plus a first article unit and associated data. The solicitation provided that substantial Government Furnished Material (GFM) and Government Furnished Equipment (GFE) would be provided to the successful bidder. GFM and GFE required for the first article was to be provided within 30 days of contract award, and the balance was to be provided within 30 days after first article approval.

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Four bids were received, with Aul's bid being low. Preaward surveys were conducted at two of Aul's plants. According to NAVALEX, at that time it became clear that the Government could not meet its requirement to provide the GFM and GFE in a timely manner. NAVALEX has provided a GFM schedule showing that much of the GFM is scheduled to be delivered beyond the date needed for the contract, and that some orders have been canceled and not rescheduled.

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Also, NAVALEX has stated that some of the GFE was found to be defective, late, or unavailable. Additionally, NAVALEX determined that some GFE and GFM other than that identified in the solicitation would be required to be substituted. Where these needed substitutions have been identified, NAVALEX asserts that 121 engineering change notices have been issued against the drawings and 107 against the parts list incorporated in the solicitation. NAVALEX found that it could not establish a firm schedule for providing GFM and GFE or identify all required IFB changes needed.

Based on these problems, NAVALEX determined that the solicitation should be canceled. Due to the uncertainties involved in scheduling delivery of GFM and GFE and the changing specifications, NAVALEX decided to perform the work in-house.

At the time that Aul's protest was filed the cancellation was only proposed, and the reasons had not been disclosed to Aul. Aul had assumed that any cancellation would be based on a finding that all prices were unreasonable and protested on that basis. Aul also alleged that "someone in higher command in Washington was not content with Aul as a potential contractor for this program." After Aul was provided with NAVALEX's actual basis for cancellation, its protest was modified. Aul alleges that the status of the GFM and GFE was known before bid opening and at that time NAVALEX obviously felt that it could be delivered on time. Also, Aul alleges that at the time of the preaward survey, NAVALEX indicated that GFM required for the first article phase of the contract would be ready immediately after award. Since the balance was not required to be furnished until after approval of the first article, Aul argues that the Government would have had sufficient time to obtain that GFM and GFE.

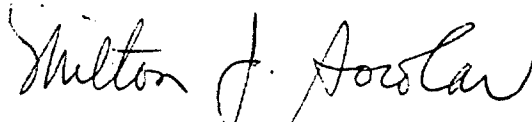
Defense Acquisition Regulation (DAR) § 2-404 (1)(a) (1976) provides that award must be made to the low responsive, responsible bidder unless

there is a compelling reason to reject all bids and cancel the solicitation. Section 2-404(1)(b) lists a number of reasons sufficiently compelling to justify cancellation of a solicitation. Included among those reasons are "specifications have been revised" and "for other reasons, cancellation is clearly in the best interest of the Government." Contracting officers have broad discretion in deciding whether to cancel a solicitation, and we will not overturn such a decision unless there is an abuse of that discretion. See, e.g., Nanex Systems Corporation, B-193252, February 14, 1979, 79-1 CPD 105.

We have held that the Government's inability to provide required GFM is a compelling reason to cancel a solicitation, B-160899, April 10, 1967, and that a material change in specifications is a compelling reason to cancel a solicitation. See, e.g., Cottrell Engineering Corporation, B-183795, September 22, 1975, 75-2 CPD 165.

NAVALEX has demonstrated that both of those reasons to cancel were present here. The protester, on the other hand, has not provided evidence contradicting NAVALEX's evidence or supporting its allegations.

The protest is denied.



For the Comptroller General
of the United States